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No. 86-908

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1986

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

*Petitioner,*

v.

THARON RAWSON, Individually and as Guardian Ad Litem for SETH RAWSON and CINDY RAWSON; BERNIECE JOHNSON, Individually and as Guardian Ad Litem for MICHAEL WAYNE JOHNSON, RUTH ELLEN JOHNSON and JOHN RUSSEL JOHNSON; LAURA DUNBAR, as Guardian Ad Litem for RICKINA ROSSITER and GLEN ROSSITER, JR.; and MARY WOOD, as Guardian Ad Litem for LESLIE D. WOOD,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The Respondents, Tharon Rawson, individually and as Guardian Ad Litem for Seth Rawson and Cindy Rawson; Berniece Johnson, individually and as Guardian Ad Litem for Michael Wayne Johnson, Ruth Ellen Johnson and John Russel Johnson; Laura Dunbar, individually and as Guardian Ad Litem for Rickina Rossiter and Glen Rossiter, Jr.; and Mary Wood, individually and as Guardian Ad Litem for Leslie D. Wood, oppose the Petitioner's request for Writ of Certiorari to the Supreme Court of the State of Idaho, and file this Brief setting forth the reasons for their opposition.

## STATEMENT OF THE CASE

This action was brought on behalf of the heirs and minor children of four mine workers who died on May 2, 1972, in the Sunshine Mine fire disaster at Kellogg, Idaho. The four decedents, John Rawson, Glen Rossiter, Wayne Johnson and Donald Wood, were all working underground on the day of the fire. At the time of their deaths, the decedents were members of the United Steelworkers of America, Local 5089.

The underlying action asserts the right to recover against the Petitioner for the wrongful death of these miners to recover against the Petitioner under Idaho Code § 5-311. Idaho Code § 5-311 provides:

> § 5-311. Action for wrongful death—When a death of a person . . . is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death; or if such person be employed by another person who is responsible for his conduct, and also against such other person in every action under this and the preceding section, such damages may be given as under all circumstances of the case may be just.

Respondent's Complaint was couched in terms of negligence and fraud.[1]

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[1]Respondents' fraud claim did not survive review by the Idaho Supreme Court. *Rawson v. United Steelworkers,* 1986 Opinion No. 124 (Filed September 4, 1986)

———o———

## COURSE OF PROCEEDINGS

In 1975 when this case was in the early stages of its exceedingly long journey through the court system, the Petitioner Union moved for summary judgment urging the court to rule that the cause of action was preempted by federal labor law. The Union's motion was granted by the trial court on those grounds in January of 1976. (Pet. App.E pp. 148a-151a) The trial court's decision was overruled in *Dunbar v. United Steelworkers of America,* 100 Idaho 523, 602 P.2d 21 (1979). (Pet.App.D pp. 95a-147a) The following language from the opinion summarizes well the Court's ruling on the basic jurisdictional question:

> . . . We believe that even assuming the claims of Plaintiffs-Appellants' fall within the general scope of the doctrine of preemption, nevertheless we deem it clear that the case also falls within the narrow exceptions to the same preemption doctrine which were described in *Farmer v. United Brotherhood of Carpenters,* 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977) 602 P.2d at 24.

On the issue of possible conflict with federal labor law (asserted by the Petitioner then and now), the Idaho Court concluded that the Plaintiffs' claims did not necessarily relate to the Union's duty of fair representation. The Court stated:

> Plaintiffs-Appellants' claims are not necessarily based on the violation of the duty of fair representation and such is not the only duty owed by the Union to its members. 602 P.2d at 24.

Further:

> We are cited to no authority which indicates that the duty of fair representation encompasses or displaces

> those duties created by a state law which requires a person, corporation or unincorporated association, to refrain from engaging in wrongful conduct which results in death or injury to personal property, 602 P.2d at 25.

In summary:

> If a union's unreasonable conduct results in the death of one of its members, it should not be excused from liability because of the legal fortuity of its organizational status anymore than if its conduct brought death to a nonunion member. 602 P.2d at 25-26.

The Idaho Court saw claims in this case totally distinct from those claims with which the National Labor Relations Board concerns itself. The court reasoned:

> We believe the interests protected by state wrongful death statutes are unrelated to those governed by federal labor laws and we ascertain no conflict which will necessarily arise between the state and federal authorities as a result of permitting such traditional litigation in the state courts. We are cited to no authority which would permit the National Labor Relations Board to take cognizance of wrongful death claims against unions. We are cited to no authority holding that it may be fairly inferred that Congress meant to deprive the states of their powers of determining litigation brought under state wrongful death statutes. 602 P.2d at 26.

Finally, against the assertion of the doctrine of preemption in general terms, the Court ruled:

> As noted in *Farmer,* exemptions or exceptions to the preemption doctrine should reflect an inquiry into the nature of the federal and state interest in regulation and the potential for interference with federal regulation or whether the potential for conflict with the federal scheme is "tangential and remote".

> Here, the federal interest is tangential at best. And we see no possibility that the federal labor laws wil be thwarted by requiring the Union to answer in state court to the claim that it wrongfully caused the death of these survivors' decedents. 602 P.2d pp. 26-27.

In a special concurring opinion, apparently reflecting the opinion of three judges, two of whom had joined in the majority opinion, Justice Bakes of the Idaho court reasoned:

> An action for wrongful death is a creature of our state statutes, is of substantial local interest, and traditionally has been committed to the jurisdiction of the courts of the state. Moreover, this action for wrongful death is unlikely to present the identical legal issues as a proceeding under the federal labor laws arising from this same factual setting. Assertion of jurisdiction by the courts of this state over the appellants' action would appear to present no significant risk of undue interference with national labor policy.

Upon remand and after several years, the Union ultimately moved again for summary judgment contending that the facts of the case failed to establish any duty on the part of the Union owed to its members. The trial court granted the Union's motion and further expressly disagreed with the Supreme Court's holding in *Dunbar, supra,* and suggested that the Idaho Supreme Court reconsider its position on the federal preemption issue (Pet.App.C pp. 77a-294a). Upon appeal of this dismissal, the Idaho Supreme Court initially affirmed the trial court's ruling The Appellants moved for a rehearing and for the Court to reconsider the Plaintiffs' negligence claim. On Sep-

tember 4, 1986, the Idaho Supreme Court withdrew its earlier opinion and reversed the trial court's grant of a summary judgment as to the Plaintiffs' negligence claim[2] (Pet.App.A pp. 1a-36a). The Idaho Supreme Court in *Rawson v. United Steelworkers,* — Idaho —, 726 P.2d 742 (1986), ruled again on the preemption issue:

> No provision of the National Labor Relations Act provides that it is federal policy to immunize labor unions from responding in tort for their negligent acts.
>
> In *Brown v. Hotel & Restaurant Employees & Bartenders,* 468 U.S. —, 104 S. Ct. 3179, 82 L.Ed.2d 373 (1984) the Court noted:
>
> "The National Labor Relations Act . . . leaves much to the state, though congress has refrained from telling us how much."
>
> The Union argues that all relationships between a union and its members flowing from a collective bargaining agreement are preempted, with the union's duty being only that of "fair representation." This leads to some rather fuzzy analysis. "Preempt" is defined as "to seize upon to the exclusion of others", Webster 3d Int'l Dictionary. Although the NLRB has been given exclusive jurisdiction to regulate and interpret collective bargaining agreements as to ongoing performances and modifications, the NLRB has not been given (nor has it seized) the function of considering tort damages for wrongful death for past union misfeasance. We remain of the view expressed by the majority of this court in *Dunbar,* 100 Idaho at 527.

---

[2]It should be noted that the caption of this case has been altered and is now and will continue to be referred to as *Rawson, et al. v. United Steelworkers of America,* — Idaho —, 726 P.2d 742 (1986).

> "We are cited to no authority, for example, which insulates a union for its negligent and tortious conduct toward one of its members, i.e., if a member of a union was struck by a motor vehicle owned by the union and operated by one of its officials during the course of his employment for the union, we cannot believe the union would be insulated from liability on the basis that the only duty it owed toward its members was that of fair representation. If a union's unreasonable conduct results in the death of one of its members, it should not be excused from liability because of the legal fortuity of its organizational status anymore than if its conduct brought death to a nonunion member." (Pet.App.A p. 19a)

Following the Idaho Supreme Court's opinion entered in September, 1986, which rejected the Union's position that state law negligence claims in this case were preempted by federal labor law, the Union filed a Motion for Stay of Mandate. The Union's position in that motion is identical to that which it adopts at this point. The Union contended that proceedings in *Rawson* should be stayed until the questions presented in *Hechler v. IBEW*, 772 F.2d 788 (11th Cir. 1985) were resolved by this Court.

The Respondents herein (Appellants below) opposed the Union's motion and objected on the grounds that further delay in this matter would result in great unfairness to the Plaintiffs who have been waiting in excess of fourteen (14) years for this case to be brought before a jury for determination on the merits.

The Idaho Supreme Court denied the Union's Motion for Stay of Mandate.

———o———

## REBUTTAL ARGUMENT

Petitioner contends that this case presents the same questions as are before this Court in *Electrical Workers v. Hechler,* No. 85-1360. Respondents assert that the specific issues raised by *Hechler* are distinguishable from the present matter and further there exists no justification for holding the present case in abeyance until the *Hechler* matter is resolved.

**1. Hechler:**

Contrary to the Union's assertion that the Idaho Supreme Court "relied heavily" on the 11th Circuit decision in *Hechler v. IBEW, supra,* the Respondents would assert that the Idaho Supreme Court simply recognized the *Hechler* decision as a correct analysis of the non-applicability of the federal preemption doctrine in cases of this nature. (Pet.App.A p. 22a) The Idaho Supreme Court recognized that both *Rawson* and *Hechler* were distinguishable from the case of *Allis-Chalmers Corp. v. Lueck,* — U.S. —, 105 S.Ct. 1904 (1985), discussed *infra,* since in these cases the claims are essentially ones for common law negligence for the breach of duty of care and therefore the liability revolves around basic state law negligence principles.

The *Hechler* case involved a Plaintiff alleging a duty running from the Union to her individually requiring the Union to assure that she, as a Union member, was qualified to work in a dangerous assignment prior to her being assigned to that job. 772 F.2d at 797-798. The present case involves a situation where a Union has undertaken to and actually conducted activities in the furtherance of

assuring the safety of the work place for all of its members. On this point the *Hechler* court specifically recognized the distinction between that case and the present case. Further, the *Hechler* court specifically declined to render a decision on the issue presented in this case. 772 F.2d at 797-798.

Although factually distinguishable, the *Hechler* decision does provide a correct analysis of the preemption doctrine and a Union's duty of fair representation.

As the Idaho Supreme Court recognized:

> A union breaches its duty of fair representation only when it treats an individual in an arbitrary, discriminatory, or bad faith manner. *Vaca v. Sipes*, 386 U.S. 171 (1967). Two key issues must be addressed to determine whether a common law negligence action is preempted by the federal remedy for breach of such a duty.
>
> "First, a court must determine whether the duty the union allegedly breached is so inextricably intertwined with the collective bargaining agreement that only a duty of fair representation claim is available. Second, in making this determination, the court must be aware of federal labor law policy and whether a negligence action against a union impermissibly impedes upon the federal labor-management regulatory scheme."
>
> "With regard to the later concern, the primary inquiry is whether the duty sought to be enforced against the union . . . is so tangential . . . to the federal scheme that the [action] is properly exempted from the [general] preemption rule. [B]alancing of the relevant factors leads [to a conclusion] that [the employee's] negligence claim is not preempted."
>
> The union's duty of fair representation does not displace those duties created by state law that prohibit a

person or corporation from engaging in tortious conduct resulting in death or injury.

"[N]othing in the [federal] statutory scheme expressly addresses such conduct or provides a mechanism for its redress. Likewise, it cannot be said that by failing expressly to [address] acts of negligence by unions, Congress intended to permit unions to engage in such acts free of the scrutiny of state courts. *Hechler*, 772 F.2d at 796-97."

"Nor is the union's contractual duty to assure worker training . . . inextricably intertwined with its federal duty of providing fair representation. . . . [T]he fact that . . . reference to a collective bargaining agreement must be made in order to define the scope of the . . . duty does not [mean that a negligence action is] no more than a [preempted] § 301 action."

"[E]ven if the state action threatens adjudication of matter cognizable by the [National Labor Relations] [B]oard or by a court adjudicating federal labor law, the extent of that threat [must be balanced] against the importance of the action to the state. [N]o impermissible conflict . . . [e]xists in this case. *Hechler*, 772 F.2d at 797."

We agree with the *Hechler* analysis. (Pet.App.A pp. 23a-24a)

**2. Allis-Chalmers:**

The Union in its Petition contends that the decision in *Allis-Chalmers v. Lueck, supra,* supports its position that the Plaintiffs' cause in this incident should be preempted. The Union further contends that the Idaho Supreme Court erred in its interpretation of *Allis-Chalmers.* Respondents assert that the opinion expressed in *Allis-Chalmers* is clearly distinguishable from the present matter and that both the Idaho Supreme Court in its opinion in the under-

lying matter and the 11th Circuit in *Hechler* were quite correct in their analyses.

A more precise analysis of the *Allis-Chalmers* decision reveals how clearly distinguishable the facts and circumstances of that case are from the one at bar and from *Hechler*.

The following are some of the more distinguishable characteristics of *Allis-Chalmers*:

1. That case involved a suit by an employee against his employer and an insurance company.

2. The employee's complaint involved a distinct contract grievance which arose specifically from provisions in the collective bargaining agreement.

3. Arguably, the employee's state claim was "substantially dependent" on analysis of the terms of the collective bargaining agreement.

4. The employee clearly had recourse through the arbitration provisions of the labor contract.

The present action involves wrongful death claims by the widows and children of deceased Union miners against the United Steelworkers. A resolution of this action is not substantially dependent upon analysis of the terms set forth in the collective bargaining agreement. The present claim is not one for breach of contract. Further, the applicable collective bargaining agreement provides no recourse for widows and children whose husbands and fathers have died as a proximate result of Union negligence.

The *Allis-Chalmers* court determined the single issue of whether § 301 of the Labor Management Relations Act

(LMRA) preempts a state-law tort action from a bad-faith delay in making disability-benefit payments due under the collective bargaining agreement. Section 301 of the LMRA states:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . may be brought in any district court of the United States having jurisdiction of the parties . . . 29 USC § 185(a).

The cause of action underlying the present matter on its face is distinguishable from suits contemplated by § 301. The present case is not a suit for violation of contracts between an employer and a labor organization representing employees. The *Allis-Chalmers* court concluded:

> The right that Lueck asserts is rooted in contract, and the bad-faith claim he brings could have been pleaded as a contract claim under § 301. Unless federal law governs that claim, the meaning of the health and disability-benefit provisions of the labor agreement would be subject to varying interpretations, and the congressional goal of the unified federal body of labor-contract law would be subverted. 53 USLW at 4467-4468.

There is no such situation in the present case.

Both the Idaho Supreme Court and the *Hechler* Court recognized the non-applicability of the *Allis-Chalmers* decision to these types of suits. The *Hechler* Court noted:

> The difference between *Allis-Chalmers* and the instant case is easily seen. In *Allis-Chalmers,* the tort was essentially a product of the contract itself—without the contract no tort claim could have existed. Moreover, the collective bargaining contract itself provided the remedy—arbitration—for a breach. Here, Plaintiff's claim is essentially one of common law negli-

> gence for breach of a duty of care. Neither the collective bargaining agreement nor § 301 provides a remedy. Though the contract may be of use in defining the scope of the duty owed, liability will turn on basic negligence principles as developed by state law. Moreover, the Court in *Allis-Chalmers* emphasized that its holding was not meant to have preclusive effect on all tort suits arising out of a labor agreement. 772 F.2d at —.

In dealing with the *Allis-Chalmers* decision the Idaho Supreme Court noted:

> In the instant case, however, we need not interpret a contract. The Appellants are sueing for breach of a duty to inspect and report under the reasonably and prudent person standard. (Pet.App.A pp. 20a-21a)

Congress never intended for labor unions to escape liability for negligent conduct in the performance of duties owed to union members. This is true whether those duties are reflected in the collective bargaining agreement or simply arise from the relationship of the parties. The *Allis-Chalmers* Court stated:

> Of course, not every dispute concerning employment, or tangentially involving a provision of a collective bargaining agreement, is preempted by § 301 or other provisions of the Federal Labor Law. . . . Nor is there any suggestion that Congress, in adopting § 301, wished to give the substantive provisions of private agreements the force of federal law, ousting an inconsistent state regulation. Such a rule would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavor. . . . In extending the preemptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to preempt state rules that proscribe conduct or

establish rights and obligations, independent of a labor contract. *Id.* at 4465.

Allowing the present state claims to proceed would not "upset the balance of power between labor and management expressed in our national labor policy". *Machinists v. Wisconsin Employment Relations Commission,* 427 U.S. 132 (1976), quoting *Teamsters v. Morton,* 377 U.S. 252 (1964).

The relationship between a union and its members is not "created by [a collective bargaining] agreement" and therefore need not be defined by application of "an evolving federal common law grounded in national labor policy". *Allis-Chalmers* at 4465, citing *Bowen v. U.S. Postal Service,* 459 U.S. 212, 224-225 (1983). The relationship between a union and its members is created by the mechanisms of actual union membership and by the constitution, bylaws and rules of that organization. Further, the case at bar is not a contract dispute which requires the "interpretative uniformity and predictability" necessary under the federal scheme. *Id.* Respondents are asserting a tort claim grounded on a breach of duty not a breach of contract. It must be clearly recognized that a collective bargaining agreement is not a contract between a union and its members. It is an agreement between an employer on one side and the union with its membership on the other. The collective bargaining agreement in this case is substantive evidence of the Union's obligations to its membership. There is, however, no question involving conflicting substantive interpretation and, therefore, there is no danger of interference with national labor policy.

The Respondents' tort claims are not "inextricably intertwined with consideration of the terms of the labor contract". Respondents' claim may indeed be related to contractual embodiment of duties set forth in the Union's constitution and bylaws. A pure breach of contract claim arising from the Union's obligations under their agreements with their members is clearly actionable in state court and, moreover, a federal court has jurisdiction over such cases only under certain circumstances. *See* 53 ALR Fed. 26.

The narrow focus of the *Allis-Chalmers* decision was best stated by that Court:

> It is perhaps worth emphasizing the narrow focus of the conclusion we reached today. We pass no judgment on whether this suit also would have been preempted by other federal laws governing employment or benefit plans. Nor do we hold that every state law suit asserting a right that related in some way to a provision in the collective bargaining agreement, or more generally to the parties of such an agreement, necessarily is preempted by § 301. *The full scope of the preemptive effect of federal labor-contract law remains to be fleshed out on a case by case basis. Allis-Chalmers* at 4468 (Emphasis supplied.)

**3. Affirmative Statement In Opposition To Union's Petition.**

Miners and Union members John Rawson, Glen Rossiter, Wayne Johnson and Don Wood died in the Sunshine Mine Disaster on May 2, 1972. The decedents' wives filed their claims on behalf of the children and the estates in March of 1973. The uncertainty created by the extensive court proceedings in this matter has created a great deal of hardship on the Respondents. It would be highly un-

just to require the Respondents to await the outcome of yet another legal proceeding before they are allowed to move on with their cause. The relevant facts underlying the Respondents' cause of action illustrate quite clearly that the Respondents' case against the Union arises out of the miners' overall relationship to the Union and not solely from the collective bargaining agreement. As such, the situation in this matter falls squarely within the exception recognized in all previous decisions by this Court.[3]

The Respondents' claim in this matter is at most of "peripheral concern" to national labor policy. *Farmer v. United Brotherhood of Carpenters,* 430 U.S. 290 (1977). Perhaps the most compelling argument against preemption in this matter is, however, that there exists absolutely no remedy under national labor law for the damages suffered by the miners' widows and children.

The Idaho Supreme Court in *Rawson* recognized the Respondents' assertions that the evidence in this matter would establish the following:

1. John Rawson, Glen Rossiter, Wayne Johnson and Don Wood did not have the use of self-rescuers (oxygen masks and cannisters);

2. Self-rescuers were stored in boxes with padlocks:

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[3]*Farmer v. United Brotherhood of Carpenters,* 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977); *San Diego Bldg. Trades Council v. Garmon,* 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed.2d 775 (1959); *United Construction Workers v. Laburnum Const. Corp.,* 347 U.S. 656, 74 S.Ct. 833, 98 L.Ed.2d 1026 (1954); *Garner v. Teamsters Union,* 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed.2d 228 (1953); *International Union, United Automobile Workers v. Russell,* 356 U.S. 634, 78 S.Ct. 932, 21 L.Ed.2d 1030 (1958); *Allis-Chalmers Corp. v. Lueck,* — U.S. —, 105 S.Ct. 1904 (1985).

3. Some of the self-rescuers were eighteen years of age and were corroded so that the valve could not be turned to operate them;

4. Some of the self-rescuers were inoperative and others were used by miners who sensed them getting hot and discarded them not knowing that the development of heat was an indication that the self-rescuer was working;

5. The miners did not know how to use self-rescuers that may have been available and had not been trained in their use;

6. No self-rescuers were stored at the 5,400 level where John Rawson and Glen Rossiter were stationed; at other levels there were fewer cannisters than the usual number of men working at those levels; and that there were only six units at the major escape route at the 3,100 foot level;

7. There were no periodic fire drills or evacuation drills for miners working underground;

8. There were no periodic fire drills or evacuation drills for miners working underground;

9. There were no periodic checks or tests made of a stench warning system and many of the survivors testified to facts permitting the inference that the system did not work;

10. Evidence exists that the fire was started by spontaneous combustion in a pile of accumulated rubbish.

(Pet.App.A pp. 16a-17a)

The Respondents further assert that the above deficiencies could have and should have been observed in the course of a reasonable inspection of the mine in which the Union participated. Further, that Union could have and should have made recommendations with regard to these deficiencies. As the Idaho Supreme Court stated:

> A reasonable inference which the trial court should have drawn in favor of the miners is that the inspecting personnel were negligent in not seeing and reporting some of these conditions. (Pet.App.A p. 17a)

It cannot be reasonably concluded that by requiring the Union to perform and participate in inspections exercising due care in any way requires an interpretation of the collective bargaining agreement or in any way would hamper the applications of national labor policies.

As this Court recognized in *Allis-Chalmers, supra,* Congress never intended for national labor law to preempt all state law claims. The Respondents assert that the facts in this matter demonstrate quite clearly that this is precisely the type of situation that Congress did not intend to preempt.

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## CONCLUSION

Considering all the circumstances of this case there appears to be no substance in Petitioner's request for the exercise of certiorari in this matter. Nor do the facts and issues in this case so closely resemble those in *Electrical Workers v. Hechler,* No. 85-1360, as to require that this Court withhold any ruling on Petitioner's request until the matter in *Hechler* can be determined. To do so would be unjust and unfair to the respondents and would in no way improve the interpretation of national labor policy. It cannot be shown where rejection of the application of preemption in this case would in any way hamper the orderly development of federal labor law. On these grounds certiorari should be denied.

Respectfully submitted,

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